



**BILLING CODE: 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 738, 740, 743, 758 and 772**

**[Docket No. 180228229-8229-01]**

**RIN 0694-AH49**

**U.S.-India Major Defense Partners: Implementation Under the Export Administration Regulations of India's Membership in the Wassenaar Arrangement and Addition of India to Country Group A:5**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to formally recognize and implement India's membership in the Wassenaar Arrangement (Wassenaar or WA). Further, BIS removes India from Country Group A:6 and places it in Country Group A:5. This action befits India's status as a Major Defense Partner and recognizes the country's membership in three of the four export control regimes: Missile Technology Control Regime (MTCR), WA and Australia Group (AG). This rule is another in the series of rules that implement reforms to which the United States and India mutually agreed to promote global nonproliferation, expand high technology cooperation and trade, and ultimately facilitate India's full membership in the four multilateral export control regimes (Nuclear Suppliers Group, MTCR, WA, and AG). This rule also makes conforming amendments.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Chantal Lakatos, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, by phone: 202-482-1739 or by email: Chantal.Lakatos@bis.doc.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The United States and India continue their commitment to work together to strengthen the global nonproliferation and export control framework and further transform bilateral export control cooperation to recognize the full potential of the global strategic partnership between the two countries. This commitment has been realized in the two countries' mutually agreed upon steps to expand cooperation in civil space, defense, and other high-technology sectors and the complementary steps of the United States to remove India defense and space-related entities from the Entity List, realign India in U.S. export control regulations, and support India's membership in the four multilateral export control regimes (Nuclear Suppliers Group, Missile Technology Control Regime, Wassenaar Arrangement and Australia Group).

To date, with the effective support of the United States, India has been admitted to three of the four multilateral export control regimes: Missile Technology Control Regime (MTCR) on June 27, 2016, the Wassenaar Arrangement (Wassenaar or WA) on December 7, 2017 and the Australia Group (AG) on January 19, 2018. These memberships, important to the two countries'

global strategic partnership, are enhanced by the United States' recognition of India as a Major Defense Partner in the India-U.S. Joint Statement of June 7, 2016, entitled, "The United States and India: Enduring Global Partners in the 21<sup>st</sup> Century." This recognition facilitates and supports India's military modernization efforts with the United States as a reliable provider of advanced defense articles.

Therefore, in this rule, the Bureau of Industry and Security (BIS), formally recognizes under the Export Administration Regulations (EAR) India's membership in the WA multilateral export control regimes and revises the EAR accordingly. Further, in this rule, BIS adds India to Country Group A:1 in Supplement No. 1 to Part 740 (Country Groups) of the EAR to implement under the EAR India's status as a member of the WA. In addition, to export control-related benefits for India as a result of prior amendments to the EAR in furtherance of the U.S.-India global strategic partnership, BIS places India in Country Group A:5, which provides the benefit of greater availability of License Exception Strategic Trade Authorization (STA) for exports and reexports to, and transfers within India under the EAR.

Countries listed in Country Group A:5 are countries included in STA § 740.20(c)(1), which authorizes exports, reexports and in-country transfers that are subject to multiple reasons for control. With this rule, India becomes the 37<sup>th</sup> country to join Country Group A:5.

*Specific EAR Amendments Recognizing and Implementing India's Membership in Wassenaar and Adding India to Country Group A:5*

Part 738

BIS amends Supplement No. 1 to Part 738, Commerce Country Chart, by removing the license requirements for National Security Column 2 (NS2) reasons. Accordingly, this rule removes the “X” in NS Column 2 for India.

#### Part 740

BIS amends Supplement No. 1 to Part 740 to add, in alphabetical order, India to Country Groups A:1 and A:5.

### *Conforming Amendments*

#### Part 738

Consistent with India’s new multilateral export control regime status, this rule also removes the first sentence of footnote 7 to the Commerce Country Chart in Supplement No. 1 to Part 738, related to India. This amendment removes the requirement that exporters file in the Automated Export System when items controlled for Crime Control Columns 1 and 3 reasons, and Regional Stability Column 2 reasons were destined to India. As a conforming change, this rule removes the word “Also” from the second sentence of footnote 7 and capitalizes the “n” in “note” since it begins the sentence.

Also, as a conforming change in Part 738, BIS amends paragraph (b)(3) of § 738.4, related to a sample analysis using the Commerce Control List and Country Chart to determine when a license is required, to remove the name “India” and replace it with the name “Chad.” The sample analysis used India as an example of a country with NS Column 2 controls. That reason for control no longer applies to India but currently applies to Chad.

#### Part 740

In adding India to Country Group A:5, BIS removes India from Country Group A:6 to avoid creating conflicting eligibility criteria for STA provisions.

#### Part 743

As a member of Wassenaar, India now is subject to reporting requirements for items controlled under Wassenaar, as set forth in Part 743, Special Reporting and Notification. Specifically, India is added, in alphabetical order, to Supplement No. 1 to Part 743, Wassenaar Arrangement Participating States.

#### Part 758

Also, consistent with India's achievements and status as a Major Defense Partner, BIS removes the requirement that exporters file certain Electronic Export Information in AES as set forth in § 758.1(b)(9). Specifically, this amendment removes the requirement that exporters file in AES when items controlled for CC Columns 1 and 3 reasons and RS Column 2 reasons are destined to India. This reporting requirement had been instituted when the license requirement for such items was removed (see *U.S.-India Bilateral Understanding: Additional Revisions to the U.S. Export and Reexport Controls Under the Export Administration Regulations*; January 23, 2015; 80 FR 3463). BIS has determined that this reporting requirement is no longer necessary.

#### Part 772

In this rule, BIS also adds India, in alphabetical order, to the list of countries under the term *Australia Group* in § 772.1, Definitions of terms as used in the Export Administration

Regulations (EAR). This updates the definition consistent with formal recognition of India's membership in the AG in a BIS final rule, entitled "Implementation of the February 2017 Australia Group (AG) Interseasonal Decisions and June 2017 Plenary Understandings; Addition of India to the AG" (83 FR 13849, April 2, 2018).

### **Export Administration Act**

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 15, 2017, 82 FR 39005 (August 16, 2017), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action,"

although not economically significant, under section 3(f) of Executive Order 12866.

Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule involves collections of information approved under OMB control number 0694-0088- Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours; 0694-0137 – License Exceptions and Exclusions, which carries an annual estimated burden of 29,998 hours; and 0694-0122 - Miscellaneous Licensing Responsibilities and Enforcement which carries an annual estimated burden of 104,288 hours. BIS believes that this rule will have no significant impact on those burdens. In fact, because India has been admitted to the MTCR, Wassenaar and AG multilateral regimes and is a Major Defense Partner, it is listed in favored country groups for purposes of license requirements, license application review policy and availability of license exceptions. Membership in favored country groups generally reduces the number of licenses required and increases the number of license exceptions available. Therefore, BIS believes that this rule will reduce the paperwork burden to the public.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov) or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule implements decisions of multilateral export control regimes, of which the United States is a supporting member, and the rule furthers the objectives of the strategic commitment established between the United States and India. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

## **List of Subjects**

*15 CFR Part 738 and 772*

Exports.

*15 CFR Parts 740, 743 and 758*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.



For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

## **PART 738-COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART**

1. The authority citation for part 738 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

2. Section 738.4 is amended by revising paragraph (b)(3) to read as follows:

### **§ 738.4 Determining whether a license is required.**

\* \* \* \* \*

(b) \* \* \*

(3) *Sample analysis.* After consulting the CCL, I determine my item, valued at \$10,000, is classified under ECCN 2A000.a. I read that the entire entry is controlled for national security, and anti-terrorism reasons. Because my item is classified under paragraph .a, and not .b, I understand that though nuclear nonproliferation controls apply to a portion of the entry, they do not apply to my item. I note that the appropriate Country Chart column

identifiers are NS Column 2 and AT Column 1. Turning to the Country Chart, I locate my specific destination, Chad, and see that an “X” appears in the NS Column 2 cell for Chad, but not in the AT Column 1 cell. I understand that a license is required, unless my transaction qualifies for a License Exception. From the License Exception LVS value listed in the entry, I know immediately that my proposed transaction exceeds the value limitation associated with LVS. Noting that License Exception GBS is “Yes” for this entry, I turn to part 740 of the EAR to review the provisions related to use of GBS.

3. In Supplement No. 1 to Part 738 revise the entry for India to read as follows:

### **SUPPLEMENT NO. 1 TO PART 738 – COMMERCE COUNTRY CHART**

#### **[Reason for control]**

Countries	Chemical and biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
* * * * *																
India <sup>7</sup>	X			X		X		X	X							
* * * * *																

\* \* \* \* \*

<sup>7</sup>Note that a license is still required for items controlled under ECCNs 6A003.b.4.b and 9A515.e for RS column 2 reasons when destined to India.

\* \* \* \* \*

## PART 740-LICENSE EXCEPTIONS

4. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

5. In Supplement No. 1 to part 740, in Country Group A, revise the entry for “India” to read as follows:

### SUPPLEMENT NO. 1 TO PART 740 – COUNTRY GROUPS

#### COUNTRY GROUP A

Country	[A:1] Wassenaar participating states <sup>1</sup>	[A:2] Missile technology control regime	[A:3] Australia group	[A:4] Nuclear suppliers group <sup>2</sup>	[A:5]	[A:6]
* * * * *						
India	X	X	X		X	
* * * * *						

<sup>1</sup>Country Group A:1 is a list of the Wassenaar Arrangement Participating States, except for Malta, Russia and Ukraine.

<sup>2</sup>Country Group A:4 is a list of the Nuclear Suppliers Group countries, except for the People's Republic of China (PRC).

## **PART 743 – SPECIAL REPORTING AND NOTIFICATION**

6. The authority citation for part 743 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

### **Supplement No. 1 to Part 743 [Amended]**

7. Supplement No. 1 to part 743 – Wassenaar Arrangement Participating States is amended by adding “India” in alphabetical order after “Hungary”.

## **PART 758 – EXPORT CLEARANCE REQUIREMENTS**

8. The authority citation for part 758 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

### **§ 758.1 [Amended]**

9. Section 758.1 is amended by removing paragraph (b)(9).

## **PART 772 – DEFINITIONS OF TERMS**

10. The authority citation for part 772 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

**§ 772.1 [Amended]**

11. Amend the definition of *Australia Group* in § 772.1 by adding “India”, in alphabetical order, after “Iceland,”.

Dated: July 31, 2018

Richard E. Ashooh

Assistant Secretary for Export Administration

[FR Doc. 2018-16691 Filed: 8/2/2018 8:45 am; Publication Date: 8/3/2018]